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June 5, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of The Information Technology
Industry Council, ET Docket No. 95-19

Dear Mr. Caton:

The Information Technology Industry Council, by its attorneys, hereby submits an original and 5 copies of its "Comments" on the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the equipment Authorization Requirements for Digital Devices, ET Docket No. 95-19.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Wilkinson, Barker, Knauer & Quinn

By: Lawrence J. Movshin

Enclosure

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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20026

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JUN 5 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Parts 2 and 15 of)
the Commission's Rules to)
Deregulate the Equipment)
Authorization Requirements for)
Digital Devices)
)
To The Commission)

ET Docket No, 95-19

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**COMMENTS OF THE
INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

Lawrence J. Movshin

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Its Attorneys

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Summary of Positions

The Information Technology Industry Council ("ITI"), by its attorneys and pursuant to section 1.415 of the Commission's rules, hereby comments on the several important issues raised by the Commission in its Notice of Proposed Rulemaking (FCC 95-46, released February 7, 1995) (the "NPRM") in the above-captioned proceeding. For the reasons summarized below, ITI strongly endorses the proposed equipment authorization program:

- A. The Supplier's Declaration of Conformity program is a reasonable balance of regulatory and marketplace interests and should be expeditiously substituted for the current certification requirements.
- B. It is a reasonable requirement that can be readily implemented both by manufacturers and by modular component suppliers, and therefore will be enforceable against both wholesale manufacturers and retail marketers of personal computers.
- C. It will allow re-allocation of FCC resources to the post marketing enforcement programs.
- D. It will assist consumers by lowering costs, putting technology into their hands sooner by

substantially improving time to market for personal computers; this will be accomplished without affecting the industry's excellent record of compliance or otherwise increasing the already extremely small likelihood of interference.

However, certain changes should be made to the proposal:

- A. The Commission should not mandate any test facility accreditation; at most, it should require test facilities performing measurements for products subject to a Declaration of Conformance equipment authorization to file basic "qualifying" information with the agency, as they have in performing certification measurements.
- B. The Supplier's Declaration of Conformity program should be applied equally and enforced where experience suggests difficulties are likely to arise. The Commission should therefore impose compliance requirements on all "modular components" (which ITI defines expansively) that are sold to consumers at retail, and should impose labelling requirements on "modular computers" assembled by retailers entirely from modular components, thereby allowing for an enforceable regulation at both the wholesale computer manufacture and retail computer integration levels.
- C. A new simplified labelling program should be adopted both for products subject to the Declaration of Conformity program and for the retail integrator/manufacture of modular computers.
- D. The Commission must strengthen and encourage enforcement efforts and enhance its consumer education programs so that FCC compliance becomes a consumer issue, thereby allowing the marketplace to supplement those enforcement efforts by discriminating purchase of FCC compliant devices.

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**COMMENTS OF
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

The Information Technology Industry Council ("ITI"), by its attorneys and pursuant to section 1.415 of the Commission's rules, hereby comments on the several important issues raised by the Commission in its Notice of Proposed Rulemaking (FCC 95-46, released February 7, 1995) (the "NPRM") in the above-captioned proceeding. ITI¹ is a long-standing participant in FCC proceedings that have developed and defined regulations applicable to computers and computing devices. ITI commends the Commission's new

1 ITI represents of the information technology industry, including manufacturers, integrators and service providers. ITI and its predecessor, the Computer and Business Equipment Manufacturers Association, for more than two decades have played a leading role in the development of rules governing the design and marketing of computing devices, including equipment authorization programs, test procedures and importation rules. As with most industry organizations, the positions expressed herein represent a consensus of ITI's members' views, and individual member companies may file comments in this proceeding expressing independent views on particular subject matters.

streamlined approach to interference protection and welcomes the opportunity to assist in developing this new equipment authorization program for computing devices.

I. Summary of Positions

For the reasons stated below, with the changes herein described, ITI strongly endorses the proposed equipment authorization program:

- A. The Supplier's Declaration of Conformity program is a reasonable balance of regulatory and marketplace interests and should be expeditiously substituted for the current certification requirements.
 - 1. It is a reasonable requirement that can be readily implemented both by manufacturers and by modular component suppliers, and therefore will be enforceable against both wholesale manufacturers and retail marketers of personal computers.
 - 2. It will allow re-allocation of FCC resources to the post marketing enforcement programs.
 - 3. It will assist consumers by lowering costs, putting technology into their hands sooner by substantially improving time to market for personal computers; this will be accomplished without affecting the industry's excellent record of compliance or otherwise increasing the already extremely small likelihood of interference.
- B. The Commission should not mandate any test facility accreditation; at most, it should require test facilities performing measurements for products subject to a Declaration of Conformance equipment authorization to file basic "qualifying" information with the agency, as they have in performing certification measurements.

- C. The Supplier's Declaration of Conformity program should be applied equally and enforced where experience suggests difficulties are likely to arise. The Commission should therefore impose compliance requirements on all "modular components" (which ITI defines expansively) that are sold to consumers at retail, and should impose labelling requirements on "modular computers" assembled by retailers entirely from modular components, thereby allowing for an enforceable regulation at both the wholesale computer manufacture and retail computer integration levels.
- D. A new simplified labelling program should be adopted both for products subject to the Declaration of Conformity program and for the retail integrator/manufacture of modular computers.
- E. The Commission must strengthen and encourage enforcement efforts and enhance its consumer education programs so that FCC compliance becomes a consumer issue, thereby allowing the marketplace to supplement those enforcement efforts by discriminating purchase of FCC compliant devices.

II. Introduction

As the Commission has appropriately noted, the agency and industry have been working cooperatively to develop a meaningful regulatory program for computers and computing devices since the mid-70's. When the first rules were proposed and adopted in the late 70's, computers were primarily business and industrial tools, although the "personal" computer was in the infant stages of its development. Recognizing the strong incentive of manufacturers to design non-interfering devices (and the lack of interference complaints traced to computers), the

Commission was nevertheless concerned that the wide-spread deployment of computers into the residential environment could increase the potential for harmful interference.

A two-pronged approach was therefore taken to equipment authorization. All computers would have to be tested to demonstrate compliance with specified limits on radio frequency emissions. Devices designed for use in commercial/industrial environments could be marketed upon completion of the testing, based on the manufacturer's self-verification; however, devices that were designed for use in a residential environment -- so called personal computers -- could only be marketed after the test results and other technical information were submitted to, and approved by, the FCC's staff by granting such product equipment certification.

Since 1979, when the "computing device rules" were first adopted, computing technology has advanced at a rapid pace, allowing for the wide-scale introduction of personal computing systems. Indeed, with the growing use of personal computers in the office, and with telecommuting and working at home increasingly blurring the distinction between the home and commercial environments, the personal computer has become a mainstay of virtually all facets of consumer lifestyles.

Moreover, modularity of computer product design has greatly expanded the types of devices that are sold directly to the consumer; today, components that are appropriately deemed "peripherals" and those that are merely sub-assemblies are sold side-by-side at retail outlets and by mail order; it is often difficult to distinguish between computer "manufacturers" and those who merely integrate manufactured component parts into a whole computer system.

As a result, the distinctions on which different equipment authorization programs are based and applied no longer have relevance or realistic meaning, and enforcement of the differing requirements is increasingly difficult.² As the time in the market for new computer models has shortened, the time to market has become a critical element

² Nearly three years ago, the Commission recognized the shortcomings of its current program and proposed a substantial revision to deal with the "modular" computer problem, i.e., the retail sale of non-tested component parts that, when assembled, create a personal computer or computing device system that is effectively unregulated. In Reply Comments in that proceeding, ITI (then CBEMA), urged adoption of an equipment authorization program that treated equally computer systems fully integrated by their manufacturer and those point-of-sale integrated systems. ITI suggested imposing testing and equipment authorization requirements on modular components and subassemblies, so that devices which were integrated at the retail outlets would be, at the very least, comprised of parts that had been tested in some, typical configuration. ITI also urged that strong consideration should be given to reducing the equipment authorization burden on manufacturers. While the record in that proceeding highlighted the existence of the problem, there was no clear consensus on a solution at that time.

in the computer's success and the consumer's enthusiasm; equipment certification has created increasing burdens on computer manufacturers while often being ignored by system integrators and point-of-sale system assemblers. Unintended competitive imbalances have thus been created in the marketplace without any apparent benefits in terms of improved interference avoidance.³

The computer industry has generally had an excellent track record in maintaining an excellent balance of trade to other parts of the world. Yet adding to the burden of the current FCC equipment authorization on domestic manufacturers has been the lack of acceptance of an FCC-issued equipment certification which is adequate, generally, to satisfy equipment authorization programs imposed by other countries or otherwise meeting compliance requirements imposed internationally. Many ITI members market products throughout the world, introducing on a global basis the technological advances developed domestically. For such manufacturers, the need to standardize on one, universally acceptable, authorization program, rather than undergoing differing equipment

³ In fact, the Commission has regularly acknowledged that, notwithstanding the enforcement difficulties inherent in the proliferation of retail outlets for computers, the incidence of interference problems associated with computing devices operated in the commercial or residential environments is extremely small.

authorization procedures in each country in which a device might be marketed, is critical to the success of their global strategies, and to their ability to sustain growth in their exports that create jobs and prosperity for the domestic economy.

To all of these ends, ITI has long advocated simplification of the equipment authorization process applicable to all computing devices, commercial and residential. Nearly a year ago, in meetings with the FCC, the concept of a Supplier's Declaration of Conformity was introduced as an appropriate middle ground for solving the various problems identified with the current certification process.

Under the proposed Declaration of Conformity program, a "supplier" would be defined as the manufacturer of a computer or peripheral device or modular component sold at retail to consumers to be integrated into a computer or peripheral device, as well as the party who has integrated modular components into a complete computer. Each such "supplier" would be responsible for testing the product (or having it tested by a third party testing organization), and completing a Supplier's Declaration of Conformity⁴ which

⁴ ITI believes that a common "format" should be developed that could be used, on a voluntary basis by all manufacturers; ITI hopes to provide such a format, much like the similar approach to the development of a
(continued...)

would be retained by the supplier with reference to the specific product tested. To the extent that a computer consisted entirely of components or devices for which the "supplier" had Declarations of Conformity completed by the manufacturer of such product, the "supplier"/integrator would be authorized to rely on the Declarations of Conformity for all such components to complete a Declaration of Conformity for the "completed" computer.

III. The Commission's Proposal

A. The Commission Should Expeditiously Adopt the Declaration of Conformity Program.

As noted, ITI has long advocated simplification of the equipment authorization process applicable to personal computers and personal computer peripherals. While ITI continues to believe that the verification program would be an adequate approach for assuring that personal computers are not the source of objectionable interference,⁵ a

⁴ (...continued)
common test report format that ITI developed and that has proven to be very useful to all facets of the computing devices industry and the Commission in preparing and auditing equipment authorization compliance tests.

⁵ The NPRM asks, at paragraph 13, whether there is any reason to extend the new Declaration of Conformity program to all computing devices, including those that are currently subject to verification. There is no record evidence to suggest that the current verification program has been inadequate in obtaining compliance and avoiding objectionable interference. ITI therefore believes that there is no basis in this "deregulatory" proceeding to move toward a more
(continued...)

properly focused and enforced self-implementing Declaration of Conformity authorization program is a very positive step in the right direction.

To that end, a Declaration of Conformity must contain enough information to allow the FCC to have confidence that the manufacturer has complied with its regulatory requirements, without imposing undue administrative burdens on the manufacturing process. In ITI's view, a Declaration of Conformity should identify (a) the device by product name and/or model number; (b) a test report establishing the date and test facility at which compliance of the device with the FCC's limits has been established (and which identifies the measurement and compliance standard or standards to which the device has been compared); and (c) the name, address and phone number for an officer or other authorized employee or agent of the supplier⁶ within the United States responsible for

⁵ (...continued)
burdensome regulatory program for devices currently subject to verification.

⁶ The Commission has appropriately proposed to make the "supplier", i.e., the party that issues the Declaration of Conformity, the responsible party for assuring compliance of the device, and to require that a Declaration of Conformity be executed before a device may be imported or marketed. In this regard, the rules adopted in this proceeding should make clear that the importer of computers, peripherals and/or modular components intended for use in a modular computer (as discussed below) will also be a "responsible party" as to any devices imported with a Declaration of
(continued...)

establishing and managing the supplier's compliance program for such device.⁷ Each product to which the Declaration of Conformity applied should include, in the owners manual or as a separate document shipped with the product, either (i) a copy of the Declaration of Conformity or (ii) a reference to the specific Declaration of Conformity (identified by the supplier's control number, a date, or some other specific identification), with a statement providing the suppliers' location where a copy of the Declaration of Conformity may be obtained.⁸

The proposed Declaration of Conformity program has several substantial advantages over the current certification requirement applicable to personal computers. First, it eliminates the paperwork and delay of the certification program, but without reducing the obligations

⁶ (...continued)
Conformity, and further that no such devices may be imported until the importer has obtained the Declaration of Conformity for such device (unless the importation is otherwise exempt from prior authorization under Section 2.1202 of the FCC's rules).

⁷ These are, in essence, the critical features of the certification application currently filed for personal computers.

⁸ Because of lead times associated with the printing of user manuals, manufacturers may not be able in each instance to make a copy of the actual Declaration of Conformity to include with the product, and therefore need the flexibility to be able to offer interested consumers the opportunity to obtain a copy upon request by simply referring in the pre-printed literature to the specific Declaration of Conformity covering such device.

associated with obtaining compliance imposed on manufacturers. Significantly, manufacturers will still have to test devices and systems to establish compliance with limits and so certify, in writing.

Moreover, this program will introduce certainty into a manufacturer's marketing scheme by allowing introduction of devices as soon as compliance has been demonstrated. By eliminating the vagaries of the FCC's seasonal review delays that have been inherent in any pre-marketing FCC approval process, consumers can get products faster and at a lower price. Delays in the time to market for a product create substantial cost, particularly as to products, like computers, that enjoy relatively short product life cycles.

A Declaration of Conformity program will save manufacturers substantial time and resources associated solely with the filing and FCC review segment of regulatory compliance, without impacting the design and testing segments that produce actual interference reduction or compliance. Moreover, the Commission's resources can be focused on marketplace auditing of actual products, rather than on review of filings often developed on the basis of prototype devices.

A Declaration of Conformity process is also significantly less burdensome for smaller manufacturers,

and, importantly, for point-of-sale suppliers. The FCC has acknowledged in the NPRM that many such companies could not remain competitive, or simply will not engage in the filing processes (and associated marketing delays) now required under the certification program.

Allowing point-of-sale computer assemblers and integrators to rely on the Declaration of Conformity provided with modular components (assuming that the modular component regulations proposed in the NPRM are adopted) even eliminates the need for any additional testing of the assembled product by such retailers -- allegedly the primary hurdle to their regular compliance with the rules that are imposed on "manufacturers". This provides an opportunity to obtain increased compliance throughout all sectors of the industry, even at the point-of-sale supplier level.

A Declaration of Conformity program will also facilitate international negotiations for a standardized, global authorization program. By allowing devices tested overseas to be marketed domestically without the need for government agency intervention of the sort associated with the certification process, the basis for mutual recognition agreements that would facilitate the marketing of domestically produced devices in the international arena without additional government authorizations is presented.

This will significantly benefit our domestic industry, by easing market entry for products throughout the world.

Improved compliance, both in the domestic retail industry and by off-shore manufacturers, will significantly benefit consumers, who will obtain improved assurance that all products have been designed for electromagnetic emissions control. Consumers should also benefit -- in the form of lower prices -- from the reduced burden (and thus less cost added to the final price of products) on manufacturers of the FCC's regulations. By requiring that a copy of or reference to the Declaration of Conformity must be included in the user manual information, the FCC will also be able to increase consumer awareness of its authorization program, thereby allowing marketplace forces to improve compliance by "educating" consumers to demand devices that include the requisite Declaration of Conformity information.⁹

⁹ ITI agrees with the Commission's concern that consumers should be able to determine through a simple, highly recognizable, labelling process whether a device is in compliance with FCC rules. As noted in Section D, below, ITI urges requirement of a special label for Modular Computers. However, for devices assembled by computer manufacturers, a less wordy, pictorial logo can, over time, develop a marketplace identity with FCC compliance. This should be adequate for most situations, and offers the possibility of increased consumer awareness for the compliance program. Several proposals for such a label, submitted by ITI members, are attached as Exhibit A. In this regard, ITI notes a movement toward internationally recognized logos, e.g., the European Community's efforts to develop recognition (continued...)

ITI does propose one change in the procedures outlined in the NPRM for the Declaration of Conformity program. The Commission has proposed that the Declaration of Conformity and associated test report must be submitted within fourteen days after receipt of a request from the FCC. This can be an onerous deadline for manufacturers when, as is often the case, the test reports are filed distantly from the responsible compliance officer or manager -- occasionally across the country, but often overseas. Adding the time that internal mail takes to reach that responsible officer, the potential that he or she may be out of the office for some period of time, and the time needed to put the package of materials together and return it to the FCC; it can be quickly demonstrated that fourteen days is simply not sufficient for reply. ITI therefore urges the Commission to provide a thirty day period for such return submissions.

B. Test Facility Accreditation Is Not Necessary.

The NPRM suggests that in lieu of the review of test reports associated with the certification process, some

⁹ (...continued)
of an EC mark, and similar efforts underway to develop a standardized mark for NAFTA recognition. Any logo adopted by the FCC should be sensitive to, and hopefully consistent with, such efforts.

form of independent accreditation¹⁰ may be appropriate for test facilities performing Declaration of Conformity testing. ITI does not believe that mandatory accreditation for test facilities is a necessary quid pro quo for lessening the filing burden on manufacturers of computers.

There is simply no evidence to suggest that independent or manufacturers' test facilities are not generally performing satisfactory tests or that there is a laboratory accreditation process that would reasonably and effectively improve such performance. In fact, the evidence is quite to the contrary. ITI notes, for example, that Verification testing is done by a large number of test facilities, none of whose work is "reviewed and approved" by the FCC. Yet Verification has been an extremely effective equipment authorization program for a multitude of products, without the need for an independent accreditation program to establish FCC confidence in the test facilities that are used to determine the compliance with FCC limits for a verified device.

Nor is it clear that NVLAP (or for that matter any other currently available accreditation program) will provide any greater level of confidence in the test results

¹⁰ To that end, the Commission has proposed use of the "National Voluntary Laboratory Accreditation Program" ("NVLAP") currently administered by the National Institute of Standards and Technology ("NIST").

that are obtained from such "accredited" labs. The number of labs that have been NVLAP approved is quite small by comparison to the number of independent and manufacturer sponsored test facilities that currently perform Class A and/or Class B device testing. Given the extremely small number of problems with reported results filed with the Commission to date, there is simply no basis for concluding that accreditation adds any substantial degree of confidence to the results reported.

On the other hand, there are numerous disadvantages to such a mandatory accreditation requirement. First, and foremost, is the bottleneck nature of such requirement, and the costs and delays on test facilities that would necessarily be imposed. NVLAP is a relatively time consuming and expensive process which, at least to date, has not been demonstrated to result in any better or higher quality test results.¹¹ Given the hundreds of test facilities that would be subject to such accreditation, it would be disastrous to create a monopoly (or even virtual oligopoly should several other accrediting bodies be developed) for accreditation that could force many excellent

¹¹ Indeed, given the very few test facilities that have achieved NVLAP approval compared to the multitude of facilities who regularly perform high quality FCC compliance testing without NVLAP accreditation, there is no basis for concluding that NVLAP accreditation provides a higher quality of test result.

test facilities out of business for lack of accrediting resources, and not for lack of quality by the test facilities in question.

Moreover, any "accreditation" requirement will be viewed by "off-shore" manufacturers as creating a serious trade barrier. NVLAP accreditation, for example, will require off-shore manufacturers either to obtain NIST approval (probably at substantial cost) for their off-shore test sites or to use (with substantial delays) domestic NIST-approved test facilities. Neither alternative will be viewed favorably, and this could lead to similar restrictions being imposed on domestic manufacturers desirous of selling devices into global markets. Thus, instead of promoting international harmonization for the benefit of domestic manufacturers, this approach could lead to the closing of many international markets.

This is not to say that accreditation is not valuable. But, as its name -- the National **Voluntary** Lab Accreditation Program -- implies, such accreditation should be a matter for each test facility to weigh and choose if, in its voluntary judgement, such accreditation will have benefit for it.¹² Just as consumer awareness of the

¹² Moreover, NVLAP is only one of several standards employed internationally, e.g., ISO Guide 25 or EN 45001, that may be used by a test facility as a guidepost for the quality of its resources, and over time, it is
(continued...)

Declaration of Conformity label will, over time, result in consumers viewing products that are not in compliance as less valuable or of lesser quality, so too, when accreditation is viewed as adding quality and value to a test facility, the manufacturing marketplace will demand such accreditation.

If the FCC continues to believe that some additional assurances are needed as to test facilities used to determine the compliance of personal computer products, then ITI believes that an alternative already exists for those test facilities that choose not to voluntarily obtain test facility accreditation from one of the nationally or internationally recognized accrediting bodies. The FCC's test facility registration program, already in use for test facilities providing certification and type acceptance testing, is a more than adequate vehicle for maintaining the degree of confidence that is currently held by the agency under the certification program.

Under Section 2.948(a)(2) of the Rules, any test facility that is used in tests for certification or

¹² (...continued)
likely that other accreditation processes and standards may be developed here or abroad that will be used by test facilities as a mark of competitively superior compliance testing.

notification applications¹³ must register with the agency, and at a minimum demonstrate its ability to perform tests in accordance with the ANSI C63.4 standard applicable to computing devices.¹⁴ Meeting the site attenuation requirements of ANSI C63.4 requires a substantial degree of electromagnetic compliance engineering expertise, both for personnel and for test equipment and the site. Thus, by applying this rule to test facilities used to determine compliance under a Declaration of Conformity, the FCC will have a reasonable level of assurance that the site and the personnel used in the testing are competent. Simply maintaining in place a program and requirement that has provided a reasonable confidence level is a far better approach than introducing an entirely new bureaucracy -- in the form of test facility accreditation -- into the Declaration of Conformity process.

¹³ Test sites used in verification testing must maintain similar information, but it need not be filed with the FCC. ITI does not believe that any additional filing requirements should be imposed on test facilities that do not intend to perform compliance testing for purposes of supporting a Declaration of Conformity.

¹⁴ ANSI C63.4 contains test facility requirements that, in general, provide some modicum of assurance as to the quality of the test facility. The Commission may want to solicit additional comments concerning any other information that should be included in a test site registration to assure that the test site possesses a reasonable level of competence to perform the required tests.

Equally important, though, through a vigorous post-marketing enforcement program, the FCC will be able to request and review the test reports generated by a substantial number of test facilities,¹⁵ including those operated by manufacturers¹⁶ and those operated by independent entrepreneurs. With those audits, the Commission will be able to review the work product of such test facilities and appropriately recommend¹⁷ any improvements or modifications in the test facilities and/or procedures utilized which, in the agency's expert view, are necessary to better achieve compliance with the regulations.

¹⁵ The current pre-marketing filing process is virtually toothless in its application to the point of sale integrators, while penalizing those manufacturers who regularly comply with the certification process with the time delays inherent in such a pre-marketing review. By relying more on a random enforcement mechanism applied to a Declaration of Conformity program, with which retailers can reasonably comply, some teeth can be put into the enforcement mechanism that is balanced on the entire industry, including both manufacturers and independent compliance testing facilities.

¹⁶ Because a manufacturer's test facility is part of its overall quality control program, and thus subject to a variety of different requirements that do not easily lend themselves to a standardization associated with accreditation, ITI has consistently opposed any accreditation program for a manufacturer's internal test facility.

¹⁷ While the Commission does not currently regulate test facilities directly, if in the future there is a determination that independent test facilities are not generally meeting the FCC's standards for quality testing, regulatory oversight in the form of enforcement mechanisms to require changes to facilities and/or procedures may be added.